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IN THE

Supreme Court of the United States

October Term, 1958

No. 505

QUEEN COHEN

Petitioner,

versus

PUBLIC HOUSING ADMINISTRATION AND HOUSING AUTHORITY OF SAVANNAH,

Respondents.

BRIEF ON BEHALF OF RESPONDENT, HOUSING AUTHORITY OF SAVANNAH IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH DISTRICT

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BRIEF ON BEHALF OF RESPONDENT, HOUSING AUTHORITY OF SAVANNAH AND ITS OFFICERS

I

The Respondents, HOUSING AUTHORITY OF SAVANNAH and its officers, of the Respondents in the above stated case, respectfully file this Brief in opposition to the Petition or Motion of QUEEN COHEN praying for the grant of the Writ of Certiorari in this case directed to the United States Court of Appeals for the Fifth Circuit by the Honorable Supreme Court of the United States.

The Fifth Circuit Court of Appeals in the decision set forth in the Brief of the attorneys for Queen Cohen upheld the decision of the District Court of the United

States for the Southern District of Georgia in dismissing Queen Cohen's case upon the grounds:

(1) That she had not applied for admission into the Fred Wessels Project;

(2) That she had no preference to be admitted because she was not a displaced person, and, what was probably an orbiter dicta statement in the opinion of the Fifth Circuit, that Court held that there could be voluntary segregation of the races in Public Housing Projects.

It is earnestly submitted by these Respondents that the case presented is not one of primary importance in any particular, as counsel for Petitioner endeavors to set forth.

As appears in the record of the proceedings in the District Court and also in brief of Petitioner, as we will more particularly point out later in this Brief, there were originally eighteen plaintiffs, seventeen of whom the record shows were displaced persons, QUEEN COHEN WAS NOT A DISPLACED PERSON. The case was pending in the District Court for several years, having been once dismissed on motion without any evidence being submitted, and when no plaintiffs appeared or testified, and later tried on its merits after the Fifth Circuit had ordered a trial and reversed the District Court in dismissing the case on motion. The record shows that when the case was ordered to trial in the District Court in Savannah counsel for the plaintiffs arose and moved to strike seventeen of the plaintiffs, stating that he had only just learned the day before that these plaintiffs would not proceed. We will elaborate upon this later in this

Brief. This left one sole plaintiff Queen Cohen. Her case is of no paramount importance as we will show, and no principles of paramount importance are involved in her case warranting a Writ of Certiorari to be granted by this Honorable Court.

While the attorneys of the Department of Justice for the Public Housing Administration will fully set forth the position of the Public Housing Administration with reference to this petition for certiorari, we cannot refrain from calling attention in this Brief to the attitude of the Public Housing Administration with reference to the proceedings in this case. We do this because we feel that the defenses of the Public Housing Administration and the Housing Authority of Savannah are almost inseparably intertwined. We called attention to this fact in our Brief in this case before the Circuit Court of Appeals of the Fifth Circuit, and here we are repeating substantially what was in our Brief before the Circuit Court of Appeals of the Fifth Circuit.

It is submitted by counsel for Respondents that as held in the District of Columbia case, the opinion of which is attached to the brief of counsel for Petitioner, the Public Housing Administration of the United States, as the administrative agency, has the discretion as to what project federal funds shall be granted and for what purpose used. (See page 40 of the Brief of Petitioner.) Accordingly, we submit that the Public Housing Administration had a perfect right to grant and allot funds for the building of the Fred Wessels Project, a white unit, as well as to grant funds for the building of another colored project in Savannah, par-

ticularly new units for colored people immediately adjacent to the Fred Wessels Tract.

It is perfectly legal for the Public Housing Administration to grant money for the building of white and colored projects, and it establishes no policy as to admitting and not admitting colored people into the white project and admitting and not admitting white people into the colored project. After one of these projects for white people is finished and ready for occupancy, then it seems that under certain circumstances in the light of the decisions of this Honorable Court a colored person might have a right to apply for admission and be admitted, provided such colored person files a proper application and brings himself within the eligible class to live in a low-cost housing project. This case does not raise any such question. This record shows that the District Court under a conflict of evidence held that Queen Cohen had never applied for admission into the Fred Wessels Project and that furthermore she had no preference and that she was not a displaced person. The question was decided without the intervention of a jury and the District Judge had a right to decide the conflict of evidence, and he did so, and the Fifth Circuit upheld that finding of the District Judge.

In order for any person, white or colored, to be eligible for a low-cost housing project, such person must necessarily file a written application with the proper authority so that the qualifications of such person may be determined. There are various qualifications which must be considered of any such person applying, such as the earnings of the person, his present housing condition, composition of family, what his status is as a citizen, whether a communist or not, and whether

otherwise fit to be an occupant of such project. Furthermore, such applicant even if he applies for admission in the proper way and is otherwise qualified such person can have no preference under the statute unless such persons falls within the class designated as a displaced person or a veteran or some other qualified status.

Petitioner is endeavoring very adroitly to have this Court grant the writ of certiorari upon the theory that this Plaintiff has a right to enjoin the policy of the Housing Authority of Savannah of having separate projects for white and separate projects for colored, and also enjoin the Public Housing Administration from granting funds for such purposes. Before any such contention could be made, there must be a qualified and eligible plaintiff who would be entitled to admission in a white project. Merely to bring forth some unqualified colored person and ask for an injunction against the Housing Authority of Savannah to abandon its policy of having separate units for white and colored, WHICH IN FACT ALREADY EXISTS AT THIS TIME, would in no way be legally sufficient. Besides, as is shown in this record, neither the Public Housing Administration nor the Housing Authority of Savannah have ever fixed any policy of denying colored people to a white unit.

It is earnestly submitted that for any colored person to bring such an action such person must make application to be admitted into a white project and show that such person is qualified under the law to be admitted, and therefore have the right to maintain such an action as Petitioner says she is trying to institute and have established in her brief.

If the policy of the Public Housing Administration and the Housing Authority of Savannah of establishing separate projects is legally wrong, then proper cases should have been brought originally before the money was granted for these projects and before the projects were constructed. The Petitioner undertook to do this in the District of Columbia and failed and never thereafter instituted a similar suit.

II

Counsel for Queen Cohen contend that it is not necessary for the Plaintiff in this case to have applied for admission into the Fred Wessels Project and endeavor to uphold their contention by citing the two cases set forth in their brief, to-wit: **School Board of City of Charlottesville, V. vs. Allen, 240 F. 2d, 59; and Gibson v. Board of Public Instruction of Dade County, 246 F. 2d, 913,** which were the basis of a portion of the opinion of the Fifth Circuit Court of Appeals.

It may here be noted that if Petitioner's counsel felt that they did not have to prove that their client, Queen Cohen, applied for admission, then may we inquire why all the strenuous effort made to bolster their case from lengthy testimony of Queen Cohen and her cousin tending to show that application had been made by Queen Cohen to be admitted to the Fred Wessels Project and had been denied. As a matter of fact, the District Judge held that Queen Cohen and her witness perjured themselves, and this fact should have been perfectly apparent to Queen Cohen's counsel under the evidence in the record.

It doesn't follow legally at all that because there was a policy in Savannah, adopted by the Housing Author-

ity in Savannah, of maintaining separate units under the grant of funds for erection of such projects by the Public Housing Administration, that colored people would be denied admission into a white project. On Page 127 of the record, Mr. Stillwell, Executive Director of the Housing Authority of Savannah testified that he had never considered the question as to what would be done if some Negro actually applied for admission into a white project inasmuch as the Housing Authority of Savannah had no fixed or established policy of admitting Negroes into white housing units or not admitting them. Furthermore, Mr. Silverman, Assistant Commissioner for Management of the Public Housing Administration testified on Page 168 of the record that the Public Housing Administration had made no requirement as to either segregation or non-segregation in housing projects, and the Public Housing Administration had never prescribed the fashion in which equality of treatment should be required in any given locality.

As contended by Respondent's counsel before the Fifth Circuit Court of Appeals and as decided by that Court in the cases of the **Schoolboard of the City of Charlottesville vs. Allen, 240 F. 2d,63, and Gibson vs. Board of Public Instruction, 246 F. 2d,914,** a clearly defined policy had been previously publicly announced by each School Board that no colored person would be admitted into a white school. Under such public announcement, the Fourth Circuit and Fifth Circuit held that it would be useless for any colored person to formally apply for admission into the white schools in either of those localities, all of the requirements of the respective School Boards as to admission having been

complied with but admission denied on account of race. The Petitioner in her brief on the Writ of Certiorari on pages 13, 14, 15, 16, 17 and 18, and particularly on page 18 endeavors to contend that the Fifth Circuit in the present case of Queen Cohen made invalid distinctions between the Charlottesville case and the Dade County case. The Fifth Circuit did no such thing.

In these cases the Plaintiffs alleged and proved that previous to the filing of their complaints they had made known to the respective School Board their desire to attend white schools, and had been told that a fixed policy of racial segregation had been adopted and they would not be admitted. For the present case, there was no application by Queen Cohen to any one and the first notice to the Housing Authority of her desire to occupy a unit in a housing project came to the Housing Authority when it was served with a copy of the petition.

In connection with this woman Queen Cohen being the only Plaintiff in this case and not an eligible party under the statute, it is pertinent to point out that she was a married woman, had a husband with whom she was living, that she did not work herself, and set herself up as a housewife and the mother of four children. (See Pages 133 and 206 of the record). It is significant from both a factual and legal standpoint that the husband's name does not appear as a party plaintiff, nor did this woman testify that she had her husband's consent to appear as a party plaintiff and to testify that she desired to live in Fred Wessels' Homes, his name in this respect never being mentioned by her. Under Section 53-501 of the Code of Georgia, the husband is the head of the family and the wife is subject to him.

Her legal existence is merged in the husband. She has no income herself and therefore could not have qualified for admission, and has no legal standing in this proceeding.

The Supreme Court of Georgia in the case of **Pace v. Pace, 154 Ga., Page 712** has held that the husband has the right to fix the matrimonial residence without the consent of the wife, and she is bound to follow the husband. But our Supreme Court has never held that a wife has the right to fix the matrimonial residence without the consent of the husband and that he is bound to follow her. Let it be noted that among the names formerly appearing as parties plaintiffs in this case are the names of several husbands and wives together.

So that we assert, that regardless of whether Queen Cohen ever properly or actually applied for admission into Fred Wessels' Homes or was a displaced person with a preference, she was not a legal party to this suit and had and has no legal standing as a party plaintiff in Court.

She was brought forward by Atlanta, Georgia, counsel for the NAACP and counsel from the New York Headquarters of this organization, as a last resort in a hopeless case to endeavor to bolster a case in which there was and is no merit and for which there was no excuse whatsoever for filing and maintaining in the Court below or for appealing to this Court for relief.

The petition of plaintiffs in this case, Section 21, (Page 14 of the record) alleges that at the time the Fred Wessels Homes were ready for occupancy all the Plaintiffs (including, of course, Queen Cohen) had a preference for admission to the Fred Wessels Homes

by virtue of the fact that they had been displaced from the site of this project, or will be displaced from the site of another public housing project to be built adjacent to the Fred Wessels Homes. As a matter of fact, however, all of these Plaintiffs other than Queen Cohen lived on the Fred Wessels' site and NOT IN THE NEW SITE ADJACENT TO THE FRED WESSELS HOMES. And it appears from the testimony of Mr. Stillwell (page 119 of the record) that in this new site a splendid set of homes, for Negroes, was in process of being erected adjacent to the Fred Wessels Homes. The foregoing is very pertinent because Queen Cohen testified (Page 139 of the record) that she had lived in that particular locality ("the bottom", she termed it) all her life and did not want to move out. She claimed as justification for wanting to live in the Fred Wessels Homes among white people only she "wanted to be comfortable." And yet as just pointed out splendid new homes for Negroes are built where Queen Cohen could apply for admission and be admitted and she would thus be housed in new, modern houses right in the neighborhood where she always had lived and certainly be "comfortable", more comfortable in fact than in the old houses where she now resides.

So that we repeat again, there is really no excuse or justification for this present litigation in behalf of ONLY ONE PERSON. This suit is now being appealed and pressed solely because the NAACP organiation in New York is desirous of trying to establish a precedent in Georgia where there is no need or demand on the part of the Negroes in Savannah or in Georgia for any such proceeding.

The contention on the part of Petitioner's counsel that it would have been in vain for this Negro woman to have applied comes very late, and seems to have been entirely an afterthought, and apparently counsel are grasping at something to cause this Court to grant the petition for certiorari.

The main contention of the counsel for Queen Cohen in the Circuit Court of Appeals as appears from the record was that the defendants had refused to consider the Plaintiff for admission to certain housing projects which have been built in the City of Savannah, particularly a project called the Fred Wessels Homes, and that the Plaintiff, Queen Cohen, as a former resident of that site was denied the right to even make application for occupancy solely because of her race and color. It appears now in the petition for certiorari, counsel for the Petitioner have changed their tactics and contentions and are asking this Court to grant the writ of certiorari because they say that the Court below should have granted an injunction restraining the Defendants from having separate units for white and colored, and also from not admitting this woman, and this regardless of whether or not the Plaintiff, Queen Cohen, ever made application for admission to the white project known as Fred Wessels Homes.

Furthermore, we find nothing in the testimony of either Mr. Arthur Hanson of the Public Housing Administration in Atlanta, or in the testimony of Mr. Abner D. Silverman, an official of the Public Housing Administration in Washington, to warrant even an inference that the Public Housing Administration had instructed the Savannah Housing Authority to refuse to admit a Negro into a white project upon

proper application being made and filed. We have previously in this brief quoted Mr. Stillwell's evidence to the effect that Negroes were permitted to apply at Fred Wessels Homes and that they were given application when they came in (R 95-96) and that he would give them an application if they came in, and that he had given three Negroes applications.

We consider now the two decisions cited in Petitioner's brief, to-wit: **School Board of City of Charlottsville, Va. v. Allen, 240 F 2d 59.** There it appeared that the respective school boards had announced a policy of segregated schools, that is, that no Negro would be admitted into a white school. The Court of Appeals accordingly held that it would have been futile for any Negro to have applied for admission in a white school. In the other case cited in the brief, to-wit: **Gibson v. Board of Public Instruction of Dade County, 246 F. 2d, 913,** which was an action for declaratory judgment in the complaint which was dismissed by the District Judge, it appeared that the Negro plaintiffs in that case alleged that they had petitioned the Board of Public Instruction to abolish segregation in the public schools of the County as soon as practicable, and that the Board had refused and instead adhered to a statement of policy maintaining and conducting the schools on a non-integrated basis. It thus appears that these Negro Plaintiffs did in effect file applications for admission.

In the concluding portion of the Opinion of the Fifth Circuit Court of Appeals that Court referred to voluntary segregation as having happened in this case, with seventeen out of the eighteen former plaintiffs. As we

interpret the language of the Circuit Court for the Fifth Circuit, that Court simply intended to hold that seventeen of these plaintiffs had voluntarily moved into a colored project after they were displaced on the site of the Fred Wessels Project and that they were so placed there by the Director of the Housing Authority of Savannah. That these seventeen plaintiffs, more or less, (some of them have disappeared entirely from Savannah) chose to be satisfied with their housing in the colored project prompted the Circuit Court to state the following:

> "If the people involved think that such is the case and if Negroes and whites desire to maintain voluntary segregation for their common good, there is certainly no law to prevent such cooperation. Neither the Fifth nor the Fourteenth Amendment operates positively to command integration of the races but only negatively to forbid governmentally enforced segregation."

As we have heretofore stated, this portion of the Opinion was probably orbiter dicta and is not a controlling part of the decision of the Fifth Circuit Court of Appeals.

RESPECTFULLY SUBMITTED,

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